INFORMATION LETTER

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Labeling Requirements for Vegetables in Wisconsin

Two important labeling requirements beyond those of the federal Food and Drug Administration were approved on June 12 by the Wisconsin State Legislature. They are embodied in Joint Resolution 51, S., which establishes Wisconsin standards for certain canned vegetables and tomato products sold at retail within the state regardless of where the products were packed.

The new requirements are:

(1) If salt, sugar, or dextrose is used in the preparation of any canned vegetable (except tomato catsup), it must be stated on the label; and

(2) Size designation for canned peas must appear on the label, but the sieve size number is not required.

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Mexican Farm Labor Program

The Senate on July 6 passed and sent to conference H. R. 3480, to extend the period during which Mexican agricultural workers may be made available for employment in this country.

The Senate approved an extension of one year, while the House voted a three-year extension.

House Committee Files Report on FDA Factory Inspection Bill

The long awaited Committee report on the factory inspection bill emerged this week from the House Committee on Interstate and Foreign Commerce in the form of a comprehensive analysis and discussion of the proposed bill and its intended effect. The Committee action in formally reporting the bill sends to the House without amendment H. R. 5740, the clean bill introduced on June 15 by Chairman Wolverton following the Committee hearings. The full text of the bill was reproduced in the INFORMATION LETTER of June 20, page 217.

The Committee, probably within the next week or ten days, will request the House Rules Committee for a "rule" permitting House consideration of the measure, thus paving the way for final House action before adjournment of Congress, now tentatively set for the end of July. Following passage by the House, the bill will be referred to the Senate Committee on Labor and Public Welfare. Factory inspection bills have been pending before the Senate Committee since their introduction early in the year.

Many of the proposed changes in existing law and many of the comments in the House Committee report reflect a Committee response to the position taken at the hearings by H. Thomas Austern, representing the N.C.A., or by Harold Bachelder, representing Indiana and Ohio canners. Of cardinal importance is the careful lim-

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Trade Agreements Act

The Senate on July 2 passed and sent to conference the compromise bill, H. R. 5495, to amend and extend the Reciprocal Trade Agreements Act.

Conferees met this week but failed to reach agreement. The chief issue is whether the membership of the Tariff Commission should be increased from six to seven members, as proposed by the House, or the existing six-man Commission should be directed to report to the President in event of a tie vote, as proposed by the Senate.

This issue arises because, upon application by a domestic industry for higher tariffs or other protection against imports, the Commission may recommend protective measures to the President only upon a majority vote of the Commission (see INFORMATION LETTER of June 30, 1951, page 255).

With some change to help domestic industries in this respect, H. R. 5495 would extend the present trade agreements program for one year—to June 12, 1954—and would provide for the establishment of a Commission on Foreign Economic Policy to study and recommend U. S. international trade policies and programs for the future.

The House Committee on Ways and Means on July 8 voted to report H. R.

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House Group Schedules Hearings on FDA Legislation—Pesticide Residues in Foods, Standards-making Procedure

Public hearings have been scheduled for next week on legislation proposing to establish a procedure by which the Food and Drug Administration may promulgate tolerances for pesticides in foods.

The hearings will be held by a subcommittee of the House Committee on Interstate and Foreign Commerce on July 14. The hearings will cover the Miller bill, H. R. 4277, dealing with pesticide residues, and, in addition, H. R. 5055, a bill to simplify standards-making procedures.

These will be the first Congressional hearings on any phase of the chemical additives problem since the close of hearings by the special House Committee headed by Representative Delaney (N. Y.) in 1950 (see INFORMATION LETTER No. 1325, Feb. 28, 1951, and Supplement to INFORMATION LETTER No. 1391, June 14, 1952).

Miller bill, H. R. 4277

The Miller bill, H. R. 4277, dealing only with pesticide residues, differs from earlier proposals in that it would

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FDA Factory Inspection

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iting of the scope of factory inspection by the language of the Committee report, as urged by the N.C.A. in its statement to the Committee.

In addition to granting to the Food and Drug Administration a compulsory but limited inspection authority, the bill as reported contains certain other proposed changes in existing law intended to carry out suggestions made, and to meet criticisms advanced, during the course of the hearings.

Representatives O'Hara (Minn.), Williams (Miss.), and Warburton (Del.) filed a minority report objecting to any proposed form of statutory amendment that would permit factory inspection without the consent of the owners and without the necessity of obtaining a search warrant.

The Declared Purpose of the Legislation

In rejecting the view of its dissenting three members that provision for a right of entry—without a requirement that the inspector first obtain either the permission of the plant operator or a court-issued writ—is both an unconstitutional and unnecessary grant of power to the Food and Drug Administration, the Committee declared that the enforceable inspection power granted by the bill is both necessary and proper. The Committee said that a power to inspect which does not go beyond what may be voluntarily permitted by the manufacturer or processor would "seriously jeopardize the protective services rendered by the Food and Drug Administration," would enable that minority of processors who would take advantage of the situation "to threaten the high level of sanitation and standards of product safety and integrity intended to be achieved by the Act and commonly observed by the more responsible operators in these industries," and "the resulting saving in costs to this minority would make it possible to engage in methods of competition which would be unfair to the responsible operators."

A requirement that the inspector obtain a search warrant before entering "would make it difficult, if not impossible, to give to manufacturers and processors the kind of assistance" that would enable them to correct unsatisfactory conditions, "would make the administration and enforcement of the Food, Drug, and Cosmetic Act much more difficult and costly than it has been in the past, and from every point of view would be wholly inappropriate as a part of the regulatory scheme of the Food, Drug and Cosmetic Act."

The report also referred to the fact that a "majority of the industry witnesses representing well in excess of 95 percent of the entire production of food, drugs, therapeutic devices, and cosmetics favored the enactment of legislation providing for compulsory inspection."

Scope of Inspection

At its February Convention, the N.C.A. adopted a resolution approving the enactment of legislation restoring the authority to enter processing factories for the purpose of making the *limited* inspection authorized by the Federal Food, Drug and Cosmetic Act.

In his appearance before the Committee, Mr. Austern requested the Committee to make amply clear in its report that in granting an enforceable right of entry to the Food and Drug Administration the Committee did not intend to endorse the FDA's views as to the scope of the inspection authority or in any way to expand the authority to inspect beyond the area and items specifically enumerated in the existing language of Section 704. Other witnesses urged that the Committee adopt amendments that would spell out in detail specific limitations.

While H. R. 5740 would add to the existing language the requirement that the inspection must be "within reasonable limits and in a reasonable manner", the Committee has in effect adopted the N.C.A. position that there be retained the words of the original law prescribing what alone may be inspected—equipment, materials, containers, and labeling—and not specifying quality control or personnel records. The Committee concluded that the power of inspection should be limited and circumscribed in this affirmative fashion without spelling out in detail other specific limitations.

As expressed in the report, the bill "is intended to provide compulsory, but limited, inspection authority." The Committee declared itself to be of the opinion that "it is imperative to limit the power and scope of inspection to be granted to the Food and Drug Administration." The requirement for the inspection "within reasonable limits and in a reasonable manner" was inserted in the bill "for the purpose of confining the scope of factory inspection to 'factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, containers and labeling therein' "—the present language of the law.

Explanation of the Bill by Sections

H. R. 5740 would amend Section 704 of the Act by revising certain language in the present Section 704 and by adding three further subsections.

The first revision of Section 704 involves the elimination of the language requiring the inspector to obtain the permission of the "owner, operator, or custodian" of the establishment and the substitution of language requiring the inspector to present "appropriate credentials and a written notice to the owner, operator, or agent in charge" of the establishment or vehicle. In the words of the report, the proposed change gives recognition to the fact that "a formal statement in writing from an accredited inspector should be required for the protection of the factory management."

The substitution of the words "agent in charge" for the word "custodian" expresses the Committee's intention to hold the inspector to the requirement that the notice be served on a person "who is a responsible representative of management." This change follows the N.C.A. recommendation that the words "person in charge" be substituted for the word "custodian" in the existing law to prevent any confusion resulting from receipt of the notice by a mere caretaker or custodial employee.

Two new sentences not in the present language of Section 704 would be added by the new bill. The first sentence requires that a separate notice shall be given for each inspection, but that a notice shall not be required for each entry made during the period covered by the inspection. The second sentence provides that each inspection shall be commenced and completed with reasonable promptness. The Committee determined that these additional sentences were necessary to prevent the Food and Drug Administration from asserting its authority to serve a notice of inspection at some particular time and then enter and re-enter an establishment as it pleased over an indefinite period.

The amended text of Section 704 suggested to the Committee by the N.C.A. offered just such a restriction on FDA authority. The N.C.A. had proposed language requiring "for each entry specific written notice" and the Committee revision is an improve-

ment and expansion of the same protection.

Inspection Reports

A new subsection (b) of Section 704 provides that upon completion of an inspection, and prior to leaving the premises, the officer or employee of FDA making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which, in his judgment, indicate that any food, drug, device, or cosmetic in such establishment is adulterated or has been prepared, packed, or held under unsanitary conditions. It is further required by this subsection that a copy of such report shall be sent promptly to the Department of Health, Education, and Welfare. No such report need be given if the inspection takes place in a railroad car, motor truck, or other vehicle.

This provision follows the recommendation of the Indiana and Ohio canners. The N.C.A. did not take a position on this proposal, indicating to the Committee that it neither opposed nor supported this suggestion.

Sample Receipts

The bill proposes a new subsection (c) to Section 704 that provides that if the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained any sample in the course of the inspection, then upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

Copies of Analyses

The new subsection (d) provides that when the officer or employee making an inspection obtains a sample of food and an analysis is made of such sample for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise unfit for food, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

In commenting on this proposed change, the Committee said:

"The purpose of the provision is to assist food manufacturers, processors, and packers to avoid shipping adulterated products in interstate commerce. The committee sees no need to extend the provision to drugs, devices, or cosmetics, since representatives of those industries said results of such analyses are not needed by them. There is a definite desire on the part of a good many interested persons in the food business, however, that the analyses be furnished in the type of situation covered by this subsection, and it seems only fair that such an analysis should be furnished promptly to the factory owner."

A provision similar to the new subsection (d) was urged upon the Committee by the Indiana and Ohio canners.

Other Proposed Amendments

Two new statutory provisions less directly related to the factory inspection privileges are contained in the Committee bill. The bill would make it unlawful to use, in labeling, advertising, or other sales promotion, any reference to any report or analysis furnished in compliance with Section 704. The purpose of this provision is to prevent the use by a person for advertising or sales promotion purposes of a report or an analysis which was favorable to him and to prevent a person from making use of unfavorable reports or analyses rendered in the case of a competitor.

The second change is made in the language of Section 304(c) of the existing law, which provides that a packer of fresh fruits and vegetables may obtain by court order, after any shipments of his product have been seized by the FDA, a true copy of the analysis upon which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples or analyses were obtained. Section 304(c) as rewritten by the bill would extend this privilege to all other manufacturers or processors of products subject to the Act. This is considered helpful even though the same data are usually available by court process in seizure cases.

STANDARDS

Concentrated Orange Juice

Notice is given in the *Federal Register* of July 4 that the Production and Marketing Administration, USDA, again proposes to revise U. S. standards for grades of canned concentrated orange juice and simultaneously to issue U. S. standards for grades of concentrated orange juice for manufacturing.

Labeling Requirements

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This requirement is stated in the Wisconsin law as follows:

"When canned peas have not been sorted for size, and no sizes have been removed, the label shall bear the words 'GARDEN RUN'. When the peas have been sorted for size, the label shall bear an appropriate descriptive term to show relative size as follows:

"'SMALL' for sizes 1 and 2, or 'TINY' if only size 1 is present.

"'MEDIUM' for sizes 3 and 4.

"'LARGE' for size 5 and larger sizes.

"'MIXED SIZES' may be used for any mixture of three or more sizes."

General Order 150 of the Wisconsin Department of Agriculture, which is based on Joint Resolution 51, S., specifies that the new requirements are to become effective August 1, 1953, with the provision that existing stocks of labels which conform to prior regulations of the State of Wisconsin may be used until April 1, 1954.

No change has been made in the Wisconsin prohibition of the sale of canned fruits, vegetables, meats, and fish to which artificial color has been added.

Trade Agreements Act

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5894, which would establish a new standard by which domestic industries may obtain relief from imports.

H. R. 5894 also would establish import quotas for crude petroleum and residual fuel oil, and special taxes on imports of lead and zinc.

Designed to protect domestic industries producing these items, the import restrictions would have the effect of reducing dollar earnings of Canada, Venezuela, Mexico, and other countries in Central and South America that are important markets for canned foods.

By the new standard for protecting domestic industry, as proposed in H. R. 5894, relief from low tariffs could be given on a finding that the low tariffs result in "substantial injury to American workers, miners, farmers, or producers, producing like or competitive articles, or impairment of the national security."

Proposed by Representative Simpson (Pa.), this provision is opposed by the administration on the basis that it would seem to protect each company in an industry rather than a "domestic industry" as a whole, as under present law.

PROCUREMENT

Canned Beef For USDA

The U. S. Department of Agriculture has announced purchase of 3,495,000 pounds of canned beef and gravy at an average price of 34.36 cents per pound, f.o.b. plant, during the week of June 29. The purchases were made with Section 32 funds for distribution through the school lunch program, to charitable institutions, and other outlets. This raises total USDA purchases of canned beef and gravy to 6,195,000 pounds.

Invitations for Bids

QM Market Center System, 1819 West Pershing Road, Chicago 9, Ill.

Veterans Administration—Procurement Division, Veterans Administration, Wash. 25, D. C.

The Walsh-Healey Public Contracts Act may apply to all operations performed after the date of notice of award if the total value of a contract is $10,000 or over.

The Veterans Administration has invited sealed bids to furnish the following:

BEET PUREE—4,850 dozen No. 2 cans. Bids due under S-23 by July 20.

FRUIT COCKTAIL—6,500 dozen No. 10 cans in heavy syrup, Grade B; or equivalent in No. 2½ or No. 2 cans. Bids due under S-24 by July 21.

FRUIT SALAD—7,500 dozen No. 2 cans, water-pack. Bids due under S-26 by July 22.

FIGS—3,000 dozen No. 10 cans in heavy syrup, Grade B; or equivalent in No. 2½ or No. 2 cans. Bids due under S-30 by July 22.

PEARS—10,750 dozen No. 2 cans of Bartlett, halved, water-pack, Grade B; 11,000 dozen No. 10 cans of Bartlett in heavy syrup, Grade B; or equivalent in No. 2½ or No. 2 cans. Bids due under S-19 by July 28.

CORN—5,750 dozen No. 10 cans, cream style, golden, Grade B; 9,000 dozen No. 10 cans, whole grain style, golden, Grade B; or equivalent in No. 2½ or No. 2 cans. Bids due under S-18 by July 28.

LIMA BEANS—8,000 dozen No. 10 cans, Grade B; or equivalent in No. 2½ or No. 2 cans. Bids due under S-32 by August 3.

The QMC has invited sealed bids to furnish the following:

MINCEMEAT—18,223 cases of 6/10. Bids due in Chicago under QM-11-069-53-177 by July 14.

Pesticides, Standards-making

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give separate legislative treatment to pesticides as opposed to the remaining types of additives, such as chemical preservatives.

H. R. 4277 would require the Secretary of Health, Education, and Welfare to establish tolerances for pesticide residues in foods, and would prohibit the interstate shipment of foods containing such residues unless the quantity did not exceed the tolerance or the pesticide was exempted by the Secretary from the requirements of a tolerance.

H. R. 4277 also provides that once a tolerance were provided or a pesticide exempted from the requirement of a tolerance, the pesticide residue may occur in any food within the limits of the tolerance without possible challenge under the adulteration sections of the law. This would be achieved by wholly exempting any pesticide covered by a regulation from Section 402(a)(1), which prohibits the presence in any food of any poisonous or deleterious substance which may render it injurious to health, and by providing that Section 402(a)(2), the section prohibiting any added poisonous or deleterious substance, shall likewise be inapplicable to any food meeting the tolerance.

Hale bill, H. R. 5055

The Hale bill, H. R. 5055, would simplify food standards procedures by eliminating the requirement that hearings be held on proposed standards or amendments to standards even when no objection has been raised to a proposal by FDA.

Under H. R. 5055, when a proposed new standard or amendment has been announced in the *Federal Register* and no adverse response has been made, the FDA would not be obliged to conduct public hearings on the proposals that are not at issue.

The bill has been endorsed by the N.C.A. Following is the text of the letter from N.C.A. Secretary Carlos Campbell to Chairman Wolverton of the House Interstate and Foreign Commerce Committee.

On May 7, 1953, Mr. Hale introduced H. R. 5055, a bill to simplify the procedures for the promulgation of mandatory food standards under Section 401 of the Federal Food, Drug, and Cosmetic Act. This bill was originally formulated by a subcommittee of the Committee on Food Standards of the New York State Bar Association, the personnel of which is virtually identical with that of the Committee on Food Standards of the Food and Drug Section of the American Bar Association.

This amendment is, so far as we know, wholly noncontroversial and is highly desirable because it will facilitate the ready amendment of existing food standards in noncontroversial respects without the formalities of a full hearing. On the other hand, the bill adequately protects everyone with respect to any controversial issue.

As you know, the bulk of mandatory standards already promulgated embrace canned foods. The canning industry is therefore vitally interested in this proposal to simplify and facilitate the amendment of these standards to accommodate any developments which constantly are occurring.

We earnestly hope that in view of the noncontroversial character of the proposal, the Committee can act favorably upon it this session, to the end that it might be enacted by Congress.

RESEARCH

Agricultural Research Policy

The RMA Agricultural Research Policy Committee has recommended that emphasis be given to developing industrial uses of farm products to help meet the problem of surplus.

At its meeting in Washington early this month, the Committee discussed the importance of increasing farm product use domestically.

In its review of the USDA research program and facilities, the Committee recommended that strong effort be made to familiarize farm people with the accomplishments and value of agricultural research, and urged the importance of a close and amicable relationship between industry and government research bodies.

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